SUPREME COURT, U. S.
JUN 2 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1011

ARMORED CARRIER CORPORATION,
Appellant,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,
Appellees,

and

B.D.C. CORPORATION,
Intervening Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PETITION FOR REHEARING

DEROUNIAN, CANDEE, GUARDINO & MURPHY,
Attorneys for Appellant,
600 Old Country Road,
Garden City, New York 11530.

J. KEVIN MURPHY,
Of Counsel.

INDEX

	PAGE
Petition for Rehearing	1
ARGUMENT:	
Grounds for Rehearing	1
Conclusion	4
Appendix A (Decision of Court, dated May 8, 1967)	6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1011

ARMORED CARRIER CORPORATION,

Appellant,

v.

UNITED STATES OF AMERICA and
INTERSTATE COMMERCE COMMISSION,

Appellees,

and

B.D.C. CORPORATION,

Intervening Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

PETITION FOR REHEARING

Pursuant to Rule 58 of the Rules of this Court, Armored Carrier Corporation files this Petition for Rehearing.

Grounds for Rehearing

It is respectfully submitted that the Court, in granting Appellees' Motion to Affirm, has overlooked an important and material aspect of the question involved.

The essence of this appeal is the need for further enunciation of the guidelines applicable to the decisions

of administrative tribunals. In order to preserve the relationship between administrative tribunals and reviewing courts, administrative decisions must report such basic findings as will allow the reviewing court to determine whether the ultimate conclusions were based upon substantial evidence in the record.

The Interstate Commerce Commission (Commission) by its failure to report basic findings dealing with the continuing wilful violations of the Interstate Commerce Act (Act) and their effect on Appellee's (BDC) fitness, has deprived the Court of the necessary yardstick with which to make such a determination.

The trial record and exhibits, as reflected in Judge Bartels' opinion, established that BDC engaged in continuing violations of the Act which were found to be wilful; filed a false statement in its application for operating authority, and engaged in and was ultimately convicted of criminal violations of the Act (J.S., App. 1, pp. 22, 23, 30).

The Commission was at one and the same time prosecuting BDC for criminal violations of the Act and, finding it "fit" to receive a permanent grant of operating authority under the Act. Yet, in its decision dealing with the question of fitness no single reference, by way of explanation or otherwise, is made to the wilful misconduct of BDC or the effect of that misconduct upon the fitness of BDC.

What then, is the basis for the decision? Is the Commission holding that an applicant for authority may be found "fit" without regard to continuing wilful, criminal violations of the Act under which authority is sought? Or, is the Commission holding that special circumstances applicable to the criminal conduct of BDC provide a basis for an exception from the Commission's own generally applied rule that wilful misconduct precludes a finding of fitness? If the latter is the holding, what are the grounds for that exception?

The Commission's decision leaves considerable doubt as to whether it regarded the misconduct of BDC as wilful and if so, whether such wilful misconduct had any bearing upon its determination that BDC was fit. Indeed, it was only by making an assumption as to the basic finding on wilfulness that the District Court was able to affirm the Commission's decision (J.S., App. A., p. 13). The decision could be construed to mean that wilful violations are irrelevant to the question of fitness and therefore, in the words of Judge Bartels, promotes "a dangerous precedent" (J.S. App. A-1, p. 26).

But, more significantly, the decision undermines the traditional relationship between the administrative agency and the courts by failing to set forth the principles applied by the Commission to the wilful misconduct of BDC, the evidence of which was fully set forth in the record. The effect of the affirmance of this decision is to remove the classic restraint on administrative tribunals upon which citizens have relied for protection from arbitrary action: the obligation of the tribunal to state the foundations for its decisions in form sufficient to enable the decision to be subjected to judicial review.

If an administrative tribunal may dispose of a series of acts of wilful misconduct which it regarded as sufficiently grievous to warrant the commencement of criminal proceedings, with the statement,

> "While we do not condone applicant's past unauthorized operations, we conclude that the evidence as to these operations do not require a finding of unfitness * * *" (J.S. App. F., p. 68).

then, it must be concluded that it has no obligation to consider the effect upon fitness of wilful and criminal misconduct.

It is submitted that the effect of the affirmance of the Commission's decision and order is to relieve the Com-

mission of the responsibility to determine the fitness of an applicant (J.S. App. F., p. 69) and to enable the Commission to abandon its obligations under the Act. Appellant urges that this Court spell out the Commission's obligation by remanding the case for further findings as to BDC's continuing, wilful violations of the Act and their effect upon BDC's fitness for a grant of operating authority.

CONCLUSION

For the reasons set forth above and in the Jurisdictional Statement and the Brief in Opposition to the Motion to Affirm, it is respectfully urged that a Rehearing be granted and that, upon such Rehearing, probable jurisdiction be noted.

Respectfully submitted,

DEROUNIAN, CANDEE, GUARDINO & MURPHY,
Attorneys for Appellant,
600 Old Country Road,
Garden City, New York 11530.

J. KEVIN MURPHY,
Of Counsel.

May 31, 1967

Certificate of Counsel

I hereby certify that the foregoing joint petition for Rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

Dated: May 31, 1967

/s/ J. KEVIN MURPHY

J. Kevin Murphy

APPENDIX A

Decision of Court, dated May 8, 1967

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

ARMORED CARRIER CORP.

v.

UNITED STATES et al.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

No. 1011

Decided May 8, 1967

PER CURIAM.

The motions to affirm are granted and the judgment is affirmed.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966.

ARMORED CARRIER CORP. *v.* UNITED STATES ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

No. 1011. Decided May 8, 1967.

PER CURIAM.

The motions to affirm are granted and the judgment is affirmed.